

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA,

v.

16-MJ-141-HKS

AIDA RAMIREZ ARRELLANO,

Defendant.

**GOVERNMENT'S NOTICE OF MOTION FOR AN
ADJOURNMENT OF THE RULE 48(b) DISMISSAL ORDER**

PLEASE TAKE NOTICE that the United States moves the Court for an adjournment of the date for the Order pursuant to Fed. R. Crim. P. 48(b) dismissing the criminal complaint in this case from December 30, 2016 to February 10, 2017. The motion is based upon an accompanying Affidavit of Special Assistant United States Attorney Brian J. Counihan. Counsel for the defendant, Brian P. Comerford, AAFP, consents to and joins in the relief sought herein.

DATED: Buffalo, New York, December 29, 2016.

JAMES P. KENNEDY, JR.
Acting United States Attorney
Western District of New York

BY: /s/ BRIAN J. COUNIHAN
Special Assistant United States Attorney
United States Attorney's Office
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FOR THE WESTERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA,

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Defendant.

AFFIDAVIT

STATE OF NEW YORK)
COUNTY OF ERIE) SS:
CITY OF BUFFALO)

BRIAN J. COUNIHAN, being duly sworn, deposes and states:

1. I am a Special Assistant United States Attorney for the Western District of New York and am presently assigned to prosecute the above-captioned case. This affidavit is made in support of the government's motion to extend the date for dismissal pursuant to Fed. R. Crim. P. 48(b) so that the parties can come to a pre-indictment resolution of this case.

2. On October 17, 2016, a criminal complaint was authorized by the Court charging the defendant with violating Title 18, United States Code, Section 1326(a), [re-entry after deportation or removal].

3. On October 19, 2016, the parties appeared before this Court for an initial appearance. At the initial appearance, the Court set December 30, 2016 for a Rule 48(b) dismissal.

4. Since the initial appearance, counsel for the government and defendant have agreed to a resolution of this matter by a plea to an information pursuant to a negotiated plea agreement. A plea and sentence is being scheduled before Chief Judge Frank P. Geraci, Jr. on or about January 31, 2017. Therefore, the parties are seeking an adjournment.

5. It is in the best interests of the defendant to resolve the case in such a way that provides a more favorable plea and sentence than what the defendant would face if convicted after indictment and trial. The time, resources, and expense of a grand jury presentation, a trial and a possible appeal would be saved if a pretrial resolution is reached, and therefore, the interests of justice outweigh the interest of the public in a speedy trial.

WHEREFORE, for all of the foregoing reasons, the parties respectfully request that the Court grant the government's motion to extend the Rule 48(b) dismissal date of the pending criminal complaint to February 10, 2017, and to exclude the period from December 30, 2016 through February 10, 2017 from the Speedy Trial Act, pursuant to Title 18, United States Code, Sections 3161(h)(7)(A) and 3161(h)(7)(B)(iv).

/s/ **BRIAN J. COUNIHAN**
BRIAN J. COUNIHAN

Subscribed and sworn to before me

this 29th day of December, 2016.

/s/ **Kara L. Kern**
KARA L. KERN, COMMISSIONER OF DEEDS
In and for the City of Buffalo, New York.
My Commission Expires Dec. 31, 2016.